IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

EFA.No. 21 of 1998()

AGAINST THE ORDER DATED 30/05/1998 IN EA 591/98 IN EP 655/97 IN OS.118/1975 of II ADDL.SUB COURT,THRISSUR

.....

APPELLANTS: (CLAIM PETITIONERS)

---

1. PADMINI AMMA, D/O.KAILASA NATHA IYER, PADASSERY HOUSE, VENKITANGU P.O., THRISSUR DISTRICT.

2. MRS.DEVAKI GOPINATHAN, MADATHIL HOUSE, P.O.MARUTHIUR, THRISSUR.

3. VIJAYAN M. IYER, "UNNI NIVAS" P.O.PAVARATTY, THRISSUR DISTRICT.

BY ADV. SRI.T.KRISHNANUNNI

RESPONDENTS: (RESPONDENTS)

---

1. SIVASANKARAN, S/O.PANDIKKADAN, VENKUPATTAR 400, 194 H, MAIN ROAD, FIRST N. BLOCK, RAJAJU NAGAR, BANGALORE – 10.

* 2. AMMUKUTTY AMMA, W/O.RAMA NATHA IYER, MADATHIL VEEDU, P.O.MARUDHIYUR, THRISSUR – 680 520. (DELETED)

3. THANKAMMAL AMMA, W/O.NARENDRAN, PERUMBAYIL HOUSE, P.O.MARUDHIYUR, THRISSUR.

4. PADMAVATHY, W/O.GOPALAN, KRISHNA VIHAR, KANATTUKARA, THRISSUR.

* 5. BALACHANDRAN, MADATHIL HOUSE, S/O.AMMUKUTTY AMMA, P.O.MARUDHIYUR, THRISSUR DISTRICT.

(THE NAMES OF R2 AND R5 ARE REMOVED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANTS AS PER ORDER DT. 12.8.2005 IN I.A.2441/2005)

BY ADV. SRI.K.RAMACHANDRAN
SRI.K.MANU RAJ

THIS EXECUTION FIRST APPEAL HAVING BEEN FINALLY HEARD ON 05/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

E.F.A.No.21 of 1998

Dated this the 5th December, 2007.

J U D G M E N T

This appeal arises from the order passed by the Executing Court in E.A.No.591/1998, filed by the appellants in E.P.No.655/1997 in O.S.No.118/75, on the file of the Sub Court, Thrissur. The suit was for recovery of possession. It has a got a chequered career. The suit was decreed. The appeals filed before this Court, as well as before the Supreme Court were dismissed. Thereafter, Execution Petition was filed for delivery of the suit property. At that point of time, appellants filed a claim petition under Order XXI Rule 58 of Civil Procedure Code contending that they are also co-owners of the property. The Executing Court, though considered the matter on merits, dismissed the petition holding that their remedy is to file a separate suit. Challenging that order, this appeal is filed.

2. The learned counsel appearing for the respondents submitted that second appellant in the appeal was a party to the main suit, and as such, he is not competent to file any petition under Order

XXI Rule 58 of Civil Procedure Code. It is also submitted that the first appellant and others filed O.S.No.346/1998 before the Sub Court, Thrissur, for the same relief and that suit was dismissed. It is submitted that the decree and judgment in O.S.No.346/1998 had become final. It is submitted that the third appellant who claims to be a member of Hindu Mithakshara Family, at the best, can have a claim for maintenance, but she also will not get any title over the disputed property. I do not think it necessary to adjudicate the right claimed by the appellants in these proceedings. The suit was filed in the year 1975, and the Execution Petition was filed in the year 1997. The petition filed under Order XXI Rule 58 of Civil Procedure Code is highly belated. Hence, without prejudice to the right of the appellants, if any, available to them under law, this appeal is only to be dismissed.

In the result, this appeal is dismissed.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

E.F.A.No.21 of 1998

J U D G M E N T

Dated:5th December, 2007.